

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Washington, D.C.

LOWE'S HIW, INC.

and

Case 21-CA-38071

MARIA YOLANDA MONTES, an Individual

and

Cases 21-CA-38593
21-CA-38704

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN,
INDUSTRIAL & ALLIED WORKERS OF AMERICA,
LOCAL 166, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

COUNSEL FOR THE ACTING GENERAL COUNSEL'S
OPPOSITION TO RESPONDENT LOWE'S HIW INC.'S MOTION TO
DISMISS OR, IN THE ALTERNATIVE, FOR PARTIAL SUMMARY JUDGMENT

Under Board Rule 102.24(b), Counsel for the Acting General Counsel, herein called Acting General Counsel, files this opposition to Respondent Lowe's HIW Inc.'s Motion to Dismiss or, in the Alternative, for Partial Summary Judgment. This opposition is based on the following:

I. Procedural Background

A. On October 16, 2007, Maria Yolanda Montes, an individual, herein called Montes, filed the charge in Case 21-CA-38071. The Teamsters, Chauffeurs, Warehousemen, Industrial & Allied Workers of America, Local 166, International Brotherhood of Teamsters,

herein called the Union, on November 18, 2008, filed the original charge in Case 21-CA-38593 and on February 10, 2009, filed the original charge in Case 21-CA-38704. (collectively attached as Exhibit 1)

B. On June 30, 2010, the Regional Director of Region 21 issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, herein called the Consolidated Complaint, in the cases described in paragraph A above. (Exhibit 2)

C. On July 14, 2010, Respondent filed an Answer to the Consolidated Complaint. (Exhibit 3)

D. On August 2, 2010, Respondent filed a Motion to Dismiss or, in the Alternative, for Partial Summary Judgment, herein called Respondent's motion.

II. Respondent's Motion Should be Denied

A motion for summary judgment will succeed where upon review of all the pleadings and submissions by the parties, there are no material facts or issues of law in dispute to be resolved by a hearing before an administrative law judge. Lake Charles Memorial Hospital, 240 NLRB 1330, 1331 (1979). Respondent's motion fails to meet the standard for obtaining a dismissal or partial summary judgment because there are indeed material issues of fact and law in dispute.

A. An ALJ Should Decide the Section 10(b) Issue and Determine if there was Fraudulent Concealment – Not Respondent

Respondent's motion correctly states that the Region previously dismissed the charge in Case 21-CA-38071, the Montes termination case. In reopening the case, the Region determined that there was sufficient evidence of fraudulent concealment warranting the tolling of the Section 10(b) period.

The Board has long-held that dismissed charges may be reinstated after the Section 10(b) period has run when there is evidence of fraudulent concealment of material facts. Ducane Heating Corporation, 273 NLRB 1389 (1985). Respondent's motion is essentially based on one argument: the claim that the Acting General Counsel has not proven the elements of fraudulent concealment that tolled the Section 10(b) period in the Montes termination case. However, Respondent's arguments in its motion are precisely the material issues of fact and law that are in dispute and precisely why an ALJ should resolve the issues.

In its motion Respondent denies that it fraudulently concealed any evidence; argues that the Acting General Counsel's evidence of concealment is unsupported; and that even if concealment occurred it was not material enough to impact the decision to terminate Montes. Respondent's motion further outlines evidence that purportedly demonstrates how the fraudulent concealment elements have not been proven. The Acting General Counsel submits that there is evidence that Respondent fraudulently concealed material facts that impacted the decision to terminate Montes. Thus, genuine issues of law and fact exist that require a hearing. Production of evidence sufficient to carry the parties' respective burdens is why a hearing should be conducted before an ALJ. At the hearing Respondent will have the opportunity to raise all of its arguments, make all of its defenses, cross-examine witnesses, and present its own witnesses.

In its motion, Respondent contends that the General Counsel should detail how the employee witness' statement was altered and describe how and when the witness' statement was altered. However, the Acting General Counsel is under no obligation to establish fraudulent concealment to Respondent's satisfaction or prior to the unfair labor practice hearing before the ALJ. Further, Respondent is seeking that the Acting General Counsel plead the evidence in its

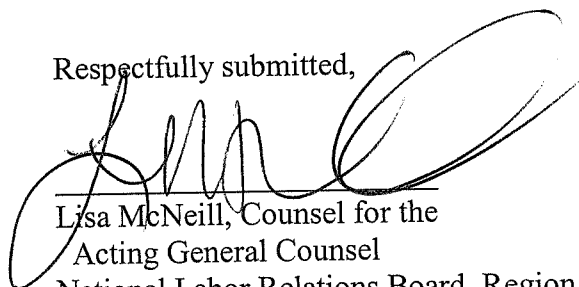
case, which is not required. North American Rockwell Corp. v. NLRB, 389 f.2d 866, 871 (10th Cir. 1968).

The parties should be given the opportunity to produce witnesses, present evidence, and develop a record before an ALJ who can examine the witnesses and evidence to determine if there was fraudulent concealment, if Section 10(b) was tolled, and if the Act was violated.

III. Conclusion

Given all the foregoing, resolution of this dispute requires a hearing before an ALJ. The Acting General Counsel contends that the Act has been violated in the Montes matter, and that a remedial order is necessary. Section 102.24(b) of the Board's Rules and Regulations states that, "[t]he Board in its discretion may deny the motion where the motion itself fails to establish the absence of a genuine issue, or where the opposing party's pleadings, opposition, and/or response indicate on their face that a genuine issue may exist." Based on the pleadings, Respondent's motion, and this opposition to the Respondent's motion, genuine issues of law and fact exist which require a hearing. Therefore, Respondent's motion should be denied and no notice to show cause should be issued.

Respectfully submitted,



Lisa McNeill, Counsel for the
Acting General Counsel
National Labor Relations Board, Region 21
888 South Figueroa Street, Ninth Floor
Los Angeles, CA 90017

Dated at Los Angeles, California, this 6th day of August, 2010.

STATEMENT OF SERVICE

I hereby certify that a copy of Counsel for the Acting General Counsel's Opposition to Respondent Lowe's HIW, Inc.'s Motion to Dismiss or, in the Alternative, for Partial Summary Judgment was submitted by E-filing to the Office of the Executive Secretary of the National Labor Relations Board on August 6, 2010. The following parties were served with a copy of the same document by electronic mail.

L. Traywick Duffie, Attorney at Law
Littler Mendelson, P.C.
TDuffie@littler.com

Robert T. Quackenboss, Attorney at Law
Hunton & Williams LLP
rquackenboss@hunton.com

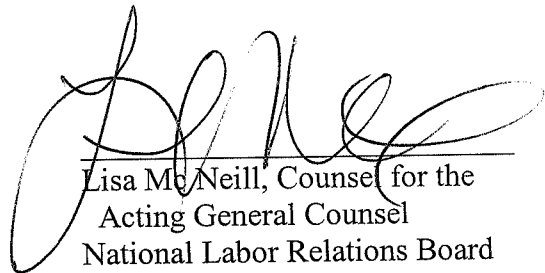
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Reich, Adell & Cvitan
pappy@rac-law.com

The following party was served with a copy of the same document overnight mail:

Maria Yolanda Montes
1852 Wheelbarrow Way
San Jacinto, CA 92582



Lisa McNeill, Counsel for the
Acting General Counsel
National Labor Relations Board
Region 21

Dated at Los Angeles, California, this 6th day of August, 2010.

EXHIBIT 1

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE

Case
21-CA-38071Date Filed
// 10-16-07

INSTRUCTIONS:

File an original together with four copies and a copy for each additional charged party named in Item 1 with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Lowe's HIW, Inc.		b. Number of workers employed 500+
c. Address (Street, city, state, and ZIP code) 3984 Indian Avenue Perris CA 92571-	d. Employer Representative Darryl Parker	e. Telephone No. (951)443-2500
		Fax No. (951)940-1981
f. Type of Establishment (factory, mine, wholesaler, etc.) distribution warehouse		g. Identify principal product or service home improvement products
h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (3) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act.		

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Within the past six (6) months, the above-named Employer violated Section 8(a)(1) and (3) of the Act by terminating Maria Yolanda Montes in retaliation for her union and/or protected concerted activities.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

Maria Yolanda Montes

4a. Address (Street and number, city, state, and ZIP code)

1852 Wheelbarrow Way

San Jacinto

CA 92582-

4b. Telephone No.

(951)722-0360

Fax No.

() -

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By Maria Yolanda Montes Maria Yolanda Montes An Individual
(signature of representative or person making charge) (Print/type name and title or office, if any)

1852 Wheelbarrow Way (fax) () -
Address San Jacinto CA 92582- (951)722-0360 X OCT 11/2007
(Telephone No.) (date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
21-2007-4249

Internet
FORM NLRB-501
(11-88)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE

Case

21-CA-38593

Date Filed

11-14-08

INSTRUCTIONS:

File an original together with four copies and a copy for each additional charged party named in Item 1 with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Lowe's Distribution Center		b. Number of workers employed
c. Address (Street, city, state, and ZIP code) 3984 Indian Avenue Perris, CA 92571	d. Employer Representative Tom Tucker	e. Telephone No. (951) 443-2500
		Fax No. (951) 940-1981
f. Type of Establishment (factory, mine, wholesaler, etc.)	g. Identify principal product or service	
h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (3) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act.		

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Within six (6) months prior to the filing of this charge, the above-referenced Employer violated Sections 8(a)(1) and 8(a)(3) of the Act by terminating employees Joe Fontana, Saul Cansino, Maria Rodriguez, Elvira Burtness, and Claudia Quezada and disciplining Don Blanche because of their union and/or other protected concerted activities.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

Teamsters, Chauffeurs, Warehousemen, Industrial & Allied Worklers of America, Local 166

4a. Address (Street and number, city, state, and ZIP code)
P.O. Box 899
Bloomington, CA 92316-0899

4b. Telephone No.

(909) 877-8326

Fax No.

(909) 877-2812

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

International Brotherhood of Teamsters

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By [Signature]
(signature of representative or person making charge)

Attorney

(Print/type name and title or office, if any)
(fax) (213) 386-5583

Address 3550 Wilshire Blvd., #2000, Los Angeles, CA 90010

(213) 386-3860

November 12, 2008

(Telephone No.)

(date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE

Case

21-CA-38704

Date Filed

2-10-09

INSTRUCTIONS:

File an original together with four copies and a copy for each additional charged party named in Item 1 with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Lowe's Distribution Center		b. Number of workers employed
c. Address (Street, city, state, and ZIP code) 3984 Indian Avenue Perris, CA 92571	d. Employer Representative Tom Tucker	e. Telephone No. (951) 443-2500
		Fax No. (951) 940-1981
f. Type of Establishment (factory, mine, wholesaler, etc.)	g. Identify principal product or service	
h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (3) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act.		

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

SEE ATTACHMENT

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

Teamsters, Chauffeurs, Warehousemen, Industrial & Allied Workers of America, Local 166

4a. Address (Street and number, city, state, and ZIP code) P.O. Box 899 Bloomington, CA 92316-0899	4b. Telephone No. (909) 877-8326
	Fax No. (909) 877-2812

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

International Brotherhood of Teamsters

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By George A. Papp
(signature of representative or person making charge)

Attorney

(Print type name and title or office, if any)
(fax) (213) 386-5583

Address 3550 Wilshire Blvd., #2000, Los Angeles, CA 90010

(213) 386-3860

Feb. 9, 2009

(Telephone No.)

(date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

ATTACHMENT

Since on or about January 1, 2005 the above-named Employer entered into a massive and ongoing conspiracy designed to deprive its employees of their rights under the National Labor Relations Act. As part of this conspiracy, the Employer actively and fraudulently attempted to and did, conceal the existence and details of the conspiracy by, among other things, altering documents, coercing employees and others into signing unlawful so-called "Confidentiality" agreements committing these persons to refrain from giving evidence to the National Labor Relations Board, and coercing employees into signing false statements.

Among the acts engaged in by the Employer in furtherance of this conspiracy and fraudulent concealment are the following: (1) Discharged numerous employees because they engaged in Union and other protected activities, or because the Employer suspected that they engaged in such activities, whose names are now unknown due to the Employer's fraudulent concealment; (2) solicited and utilized labor spies; (3) coercively interrogated employees as to their union activities and the union activities of other employees; (4) used labor spies to engage in surveillance of employees' union activities; (5) established, maintained, and carried out a policy to fabricate reasons to discharge employees suspected of engaging in union activities; (6) threatened employees with reprisals if they engaged in union activities; (7) created a list of employees who engaged in or were suspected of engaging in union activities (herein called the "enemies list"); (8) blacklisted employees on the enemies list; (9) coerced employees into signing "yellow dog contracts," (10) coerced employees into signing statements repudiating the Charging Party; (11) invaded employees privacy and rights under the Act by opening their lockers and lunch pails in search of union literature and authorization cards; (12) established and carried out a policy to comb through employees' personnel records in search of reasons to terminate employees who engaged in, or were suspected of engaging in, union activities; and (13) expressed to employees the Employer's policy that pro-union employees were a threat to the Employer and should be terminated.

EXHIBIT 2

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

LOWE'S HIW, INC.

and

Case 21-CA-38071

MARIA YOLANDA MONTES, an Individual

and

Cases 21-CA-38593
21-CA-38704

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN,
INDUSTRIAL & ALLIED WORKERS OF AMERICA,
LOCAL 166, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

ORDER CONSOLIDATING CASES,
CONSOLIDATED COMPLAINT
AND
NOTICE OF HEARING

Maria Yolanda Montes, an individual, herein called Montes, has charged in Case 21-CA-38071 that Lowe's HIW, Inc.; and Teamsters, Chauffeurs, Warehousemen, Industrial & Allied Workers of America, Local 166, International Brotherhood of Teamsters, herein called the Union, has charged in Cases 21-CA-38593 and 21-CA-38704, that Lowe's Distribution Center, herein correctly designated Lowe's HIW, Inc., herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Sec. 151, et seq., herein called the Act. Based thereon, and in order to avoid unnecessary

costs or delay, the Acting General Counsel, by the undersigned, pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, ORDERS that these cases are consolidated.

These cases having been consolidated, the Acting General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, issues this Order Consolidating Cases, Consolidated Complaint and Notice of Hearing and alleges as follows:

1. (a) The charge in Case 21-CA-38071 was filed by Montes on October 16, 2007, and a copy was served on Respondent by regular mail on October 17, 2007.

(b) The limitations period set forth in Section 10(b) of the Act is tolled in Case 21-CA-38071 because Respondent deliberately concealed material facts, and Montes was ignorant of those facts without any fault or want of due diligence on her part.

(c) The original charge in Case 21-CA-38593 was filed by the Union on November 14, 2008, and a copy was served on Respondent by regular mail on November 18, 2008.

(d) The first amended charge in Case 21-CA-38593 was filed by the Union on January 16, 2009, and a copy was served on Respondent by regular mail on January 20, 2009.

(e) The second amended charge in Case 21-CA-38593 was filed by the Union on April 10, 2009, and a copy was served on Respondent by regular mail on April 10, 2009.

(f) The original charge in Case 21-CA-38704 was filed by the Union on February 10, 2009, and a copy was served on Respondent by regular mail on February 11, 2009.

(g) The amended charge in Case 21-CA-38704 was filed by the Union on April 10, 2009, and a copy was served on Respondent by regular mail on April 10, 2009.

2. (a) At all material times, Respondent, a Washington corporation, with an office and distribution facility located at 3984 Indian Avenue, Perris, California, herein called the Perris facility, has been engaged in the retail sale of home- improvement products.

(b) Annually, Respondent, in conducting its business operations described above in paragraph 2(a), derives gross revenues in excess of \$500,000, and purchases and receives at its Perris, California facility goods valued in excess of \$50,000 directly from points outside the State of California.

3. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

4. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

5. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Brett Absher	Operations Manager
Alex Martinez	Assistant Operations Manager
Alicia Valencia	Human Resource Coach
Maria Becerra-Gotcher	Human Resource Manager
Cassandra Jones	Human Resources Coach
Jonathan Flores	Human Resources Manager

Brice Windham	Facilities Manager
Belinda Nahay	Coach
Victor Barkley	Coach
Janice Dunn	Coach
Guillermina "Gigi" _____	Coach
Raymond Gomez	Coach

6. (a) On or about August 22, 2007, Respondent suspended its employee Montes.

(b) On or about August 31, 2007, Respondent terminated its employee Montes.

(c) On or about November 4, 2008, Respondent suspended its employee Saul Cansino, herein called Cansino.

(d) On or about November 10, 2008, Respondent terminated its employee Cansino

(e) On or about November 5, 2008, Respondent disciplined its employee Joe Fontana, herein called Fontana.

(f) On or about November 11, 2008, Respondent terminated its employee Fontana.

(g) On or about November 11, 2008, Respondent disciplined its employee Danny Ray Blough.

(h) Respondent engaged in the conduct described above in paragraphs 6(a) through (g) because the named employees of Respondent joined or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

7. In or about September 2008, Respondent, by Alicia Valencia, in the human resources department at the Perris facility, threatened its employees that they would be discharged if they engaged in union activities.

8. In or about September 2008, Respondent, by Alicia Valencia, in the locker room at the Perris facility, opened employees' lockers and lunch pails to search for Union literature and authorization cards.

9. On or about November 11, 2008, Respondent, by Guillermina "Gigi" _____, in the label control department at the Perris facility, interrogated its employees about their union membership, activities, and sympathies.

10. By the conduct described above in paragraph 6, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

11. By the conduct described above in paragraphs 7 through 9, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

12. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraph 6, the Acting General Counsel seeks an order requiring that Respondent pay interest on any backpay or other monetary awards on a compounded, quarterly basis. The Acting General Counsel also seeks an Order requiring that Respondent, in addition to posting at its facility, post on its Intranet site a copy of an appropriate Notice, in English and in Spanish, to all employees. The Acting General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the consolidated complaint. The answer must be received by this office on or before July 14, 2010, or postmarked on or before July 13, 2010. Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlr.gov>, click on **E-Gov**, then click on the **E-Filing** link on the pull-down menu. Click on the "File Documents" button under "Regional, Subregional and Resident Offices" and then follow the directions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the document need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the

required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must still be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT during the calendar call commencing at 1:00 p.m., PDT, on the 30th day of August, 2010, a hearing will be conducted before an Administrative Law Judge of the National Labor Relations Board at a location to be determined later. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338. The precise order of all order of cases to be heard on this calendar call will be determined no later than the close of business on the Friday preceding the calendar call.

DATED at Los Angeles, California, this 30th day of June, 2010.

/s/William M. Pate
William M. Pate
Acting Regional Director, Region 21
National Labor Relations Board
888 South Figueroa Street, Ninth Floor
Los Angeles, CA 90017-5449

Attachments

EXHIBIT 3

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21**

LOWE'S HIW, INC.)	
)	
and)	
)	
MARIA YOLANDA MONTES, an Individual)	Case 21-CA-38071
)	
and)	
)	
TEAMSTERS, CHAUFFEURS,)	Cases 21-CA-38593
WAREHOUSEMEN, INDUSTRIAL & ALLIED)	21-CA-38704
WORKERS OF AMERICA, LOCAL 166,)	
INTERNATIONAL BROTHERHOOD OF)	
TEAMSTERS)	

RESPONDENT LOWE'S HIW, INC.'S ANSWER TO COMPLAINT

Pursuant to Sections 102.20 and 102.21 of the Rules and Regulations of the National Labor Relations Board, Respondent Lowe's HIW, Inc. ("Lowe's" or "Respondent"), by undersigned counsel, submits this Answer to Complaint in response to the Order Consolidating Cases, Consolidated Complaint and Notice of Hearing ("Complaint") and denies all allegations, not expressly admitted herein, that it committed unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. § 151, *et seq.* ("the Act").

1. (a) Lowe's admits the allegations contained in Paragraph 1(a) of the Complaint.

(b) Lowe's denies the allegations contained in Paragraph 1(b) of the Complaint.

(c) Lowe's admits the allegations contained in Paragraph 1(c) of the Complaint.

(d) Lowe's admits the allegations contained in Paragraph 1(d) of the Complaint.

(e) Lowe's admits the allegations contained in Paragraph 1(e) of the Complaint.

(f) Lowe's admits the allegations contained in Paragraph 1(f) of the Complaint.

(g) Lowe's admits the allegations contained in Paragraph 1(g) of the Complaint.

2. (a) Lowe's admits the allegations contained in Paragraph 2(a) of the Complaint.

(b) Lowe's admits the allegations contained in Paragraph 2(b) of the Complaint.

3. Lowe's admits the allegations contained in Paragraph 3 of the Complaint.

4. Lowe's is without sufficient knowledge regarding the allegations contained in Paragraph 4 and therefore they are denied.

5. Lowe's objects to the allegations in Paragraph 5 because the phrase "at all material times" is vague and unclear. Lowe's denies that its employees Jonathan Flores and Brice Windham held the titles Human Resources Manager and Facilities Manager, but admits that they held the positions of Human Resources Coach and Assistant Operations Manager, respectively. Lowe's admits that the remaining individuals named in the allegations in Paragraph 5 of the Complaint held the job titles listed opposite their names at some time during their employment with Lowe's. Lowe's denies any and all remaining allegations contained in Paragraph 5 of the Complaint.

6. (a) Lowe's admits that it relieved Charging Party Maria Yolanda Montes ("Montes") of her duties pending investigation on August 22, 2007, but denies any and all other allegations contained in Paragraph 6(a) of the Complaint.

(b) Lowe's admits the allegations contained in Paragraph 6(b) of the Complaint.

(c) Lowe's admits that it relieved Saul Cansino of his duties pending investigation on November 4, 2008, but denies any and all other allegations contained in Paragraph 6(c) of the Complaint.

(d) Lowe's denies that it terminated the employment of Saul Cansino on November 10, 2008, but admits that it terminated his employment on November 7, 2008. Lowe's denies any and all other allegations contained in Paragraph 6(d) of the Complaint.

(e) Lowe's admits the allegations contained in Paragraph 6(e) of the Complaint.

(f) Lowe's denies that it terminated the employment of Joe Fontana on November 11, 2008, but admits that it terminated his employment on November 12, 2008. Lowe's denies any and all other allegations contained in Paragraph 6(f) of the Complaint.

(g) Lowe's admits the allegations contained in Paragraph 6(g) of the Complaint.

(h) Lowe's denies the allegations contained in Paragraph 6(h) of the Complaint.

7. Lowe's denies the allegations contained in Paragraph 7 of the Complaint.

8. Lowe's denies the allegations contained in Paragraph 8 of the Complaint.

9. Lowe's denies the allegations contained in Paragraph 9 of the Complaint.
10. Lowe's denies the allegations contained in Paragraph 10 of the Complaint.
11. Lowe's denies the allegations contained in Paragraph 11 of the Complaint.
12. Lowe's denies the allegations contained in Paragraph 12 of the Complaint.

Lowe's denies that any unfair labor practices have occurred, and Lowe's denies that the General Counsel is entitled to any of the relief sought in the un-numbered "WHEREFORE" Paragraph following Paragraph 12 of the Complaint. Lowe's further denies that Charging Parties Montes or Teamsters, Chauffeurs, Warehousemen, Industrial & Allied Workers Of America, Local 166, International Brotherhood Of Teamsters ("Charging Parties") are entitled to any relief of any kind in this action. To the extent the General Counsel asserts factual allegations in the Remedy Paragraph, those allegations are denied.

AFFIRMATIVE AND OTHER DEFENSES

Without waiving or excusing the burden of proof of the General Counsel, or admitting that Respondent has any burden of proof, Respondent hereby asserts the following affirmative defenses:

FIRST DEFENSE

The Complaint fails, in whole or in part, to state claims upon which relief may be granted.

SECOND DEFENSE

The Complaint should be dismissed, in whole or in part, because Lowe's has not interfered with, restrained or coerced the Charging Parties or other employees named in the Complaint in the exercise of their rights under Section 7 of the Act and has acted at all times in accordance with the Act and applicable NLRB precedent.

THIRD DEFENSE

The Complaint should be dismissed because Lowe's did not take any actions in violation of the Act.

FOURTH DEFENSE

The Complaint should be dismissed because any and all alleged actions taken by Lowe's were for legitimate, non-discriminatory business reasons and, even if Lowe's had considered the union sympathies of Montes or other named employees as alleged, which Lowe's denies, Lowe's would have taken the same actions against such employees for permissible business reasons.

FIFTH DEFENSE

The Complaint should be dismissed, in whole or in part, because some or all of the accused actors were not supervisors or agents of Lowe's within the meaning of the Act.

SIXTH DEFENSE

The Complaint should be dismissed, in whole or in part, because some or all of the alleged actions, including but not limited to the acts alleged regarding Charging Party Montes, took place outside of the Section 10(b) period.

SEVENTH DEFENSE

The Complaint should be dismissed, in whole or in part, because, even if Respondent did fraudulently conceal material facts, which it denies, the National Labor Relations Board, and Charging Parties Montes and Teamsters, Chauffeurs, Warehousemen, Industrial & Allied Workers Of America, Local 166, International Brotherhood Of Teamsters are guilty of a want of diligence.

EIGHTH DEFENSE

Expressly denying any wrongdoing on its part, and expressly denying that Charging Parties have been damaged as alleged, Lowe's states that Charging Party Montes and the other

employees named in the Complaint failed to properly mitigate or reduce the injuries and damages alleged in the Complaint.

NINTH DEFENSE

The Complaint should be dismissed, in whole or in part, because some or all of the allegations underlying the instant Complaint are barred, in whole or in part, by the doctrine of laches, res judicata, collateral estoppel, and/or failure to exhaust administrative remedies.

TENTH DEFENSE

The National Labor Relations Board has violated Lowe's due process rights by, *inter alia*, reopening the Montes Charge outside the Section 10(b) period and by issuing a Complaint based on the Montes Charge, despite a clear lack of evidence to support an allegation of fraudulent concealment of material facts by Lowe's, or any other violation of the Act by Lowe's.

ADDITIONAL DEFENSES

Lowe's reserves the right to assert additional defenses as the Charging Parties' claims are more fully disclosed during the course of this action.

Lowe's asserts that the Complaint is not substantially justified and seeks the recovery of all allowable fees and expenses pursuant to Board Rules and Regulations, the Equal Access to Justice Act, and all other applicable laws.

WHEREFORE, Lowe's respectfully requests that upon final disposition of this Complaint, that the Administrative Law Judge and the National Labor Relations Board find that Lowe's did not violate the National Labor Relations Act in any of the ways alleged in the Complaint, that Lowe's receive an award of all allowable fees and expenses incurred in this proceeding, and grant such other and further relief, at law or in equity, to which Lowe's shows itself justly entitled.

Respectfully submitted this 14th day of July, 2010.

HUNTON & WILLIAMS LLP

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Attorneys for Respondent Lowe's HIW, Inc.

CERTIFICATE OF SERVICE

I certify that on this 14th day of July, 2010, I caused the foregoing to be electronically filed with the National Labor Relations Board at <http://nrlb.gov> and a copy of same to be served by **overnight delivery** to the following:

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Industrial & Allied Workers Of America,
Local 166, International Brotherhood Of
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